

## **REMARKS**

### **Status of the claims**

Claims 1-12 and 14-15 are pending in the application. Claim 12 has been amended to incorporate the subject matter of claim 13 and claim 13 has been accordingly cancelled. No new matter has been added by way of these amendments. As such, entry and consideration thereof are respectfully requested.

### **Rejections under 35 U.S.C. §112, 2<sup>nd</sup> paragraph**

Claims 1-15 have been rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph as being unclear. More specifically claim 1 has been rejected as being unclear as to what is meant by “drop-shaped aluminum beam” and how it relates to the conveyor belt/freezer.

Claim 12 has been rejected with the assertion that it is unclear why “22, 23 and 24” are recited.

Applicant traverses these rejections and withdrawal thereof is respectfully requested. The MPEP states in §2173.02 that

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and

(C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

The shape and function of the conveyor belt (comprising the aluminum drops as surface of the belt) are illustrated in Figure 3 and described on page 8, lines 15-30 of the specification. The meaning of “drop-shaped aluminum beam” and how it relates to the conveyor belt/freezer would be readily apparent to one skilled in the art, particularly upon consideration of the specification, as is the proper way to interpret and view the claims.

With regard to the reference of “22, 23 and 24” in claim 12, as is readily apparent from the claim itself that these reference numerals refer to the airflow in the freezer coming from above (22) and from the side (23) of the fillet, in order to freeze the part of the fillet, which is not in contact with the aluminum. The airflow (24) are the openings which cool the aluminum drops and thereby lower the temperature of the aluminum (see also Figure 3 and page 8, lines 15-30).

Thus, metes and bounds of the claims are clear as currently written and withdrawal of the rejections is respectfully requested.

#### **Rejections under 35 U.S.C. §103**

Claims 1-11 and 15 have been rejected under 35 U.S.C. §103 as being obvious over JP 09-28284 (JP '84). The Examiner asserts that JP '84 discloses a process for producing fish fillets by first cutting the head and tail of the fish and then longitudinally cutting the fish into two pieces, wherein the fish has been frozen. The Examiner asserts that it would be inherent that the frozen portion of the fish pieces include a frozen shell and the freezing would increase the shelf-life by halting microorganism growth and slowing enzymatic activity. JP '84 is asserted to be silent as to the use of a particular freezer with a conveyor and specific fish processing that utilizes both blow and touch freezing. The Examiner asserts that it would be inherent that the conveyor belt used in a freezer would provide the touch portion of the freezing while the cold air would provide the blow freezing. It is alleged that the use of a conveyor with drop-shaped aluminum cross-beams would not provide a patentable distinction and that this particular configuration of a conveyor would be an obvious preference based on the particular conveying system readily available and/or cost. Further it is asserted that removing the skin and bones in

essentially one step would be expected to increase the value of the fish. Applicants traverse this rejection and withdrawal thereof is respectfully requested.

The instant invention, as encompassed by independent claim 1, is directed to

A method for processing fish or fish fillets by removing at least a part of the bone area simultaneously as the fillet is skinned, the method comprising:

- form freezing the fish to be processed by combining blow-and-touch-freezing, and
- removing the fish skin after the necessary form freezing is obtained, wherein the form freezing comprises cooling the surface of a conveyor belt by an airflow, the conveyor belt in a freezer comprising drop-shape aluminium beam, lowering the temperature of the aluminium by airflow, such that the heat from the fish fillet is removed through touch freezing, and wherein the airflow from above and sidewise freezes that part of the fillet, which does not touch the aluminium beam, so that frozen shell is generated around the fillet.

The method of the instant invention requires the combination of blow-and-touch freezing. The Examiner takes the position it would be inherent that the conveyor belt used in a freezer would provide the touch portion of the freezing while the cold air would provide the blow freezing. However, the Examiner must give the claims the broadest reasonable interpretation and the interpretation by the Examiner is not reasonable. One of ordinary skill in the art would only interpret the steps of blow-and-touch freezing as being active steps, not passive steps inherently occurring as in JP '84.

Claim 1 further requires that a "frozen shell is generated around the fillet". There is simply no teaching or suggestion in the prior art of using a blow-and-touch method of freezing a food product prior to processing to thereby form a shell around the product. The Examiner has failed to point out any evidence or example of forming a frozen shell around a food product using the combined freezing method of blow-and-touch freezing as required by the instant claims. As such, the present invention is not suggested by or obvious over the reference and withdrawal of the rejection is respectfully requested.

Claims 12-14 have been rejected under 35 U.S.C. §103 as being obvious over Eide alone or combined with Vogt. Eide is relied upon for disclosing an apparatus having a device for removing skin and bones from fish fillets by using a conveyor belt, electronic controlling

mechanisms, a roller (freezing drum), knives, a spooler shaft (to drive the roller drum) and inherently a guide for positioning the bones in the fillet. With regard to the claimed feature of cooling means, the Examiner asserts that the openings in the belt of Edie are capable of airflow and during treatment with the freezing drum the fish fillets and conveyor belt would be exposed to cooling via contact and close proximity with the freezing drum. Alternatively, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to further freeze the treated fish, as an art recognized means of preservation. In this regard, Vogt is relied upon for teaching an apparatus for freezing fish including a mesh belt conveyor having openings available for airflow to cool the fish and, inherently, the conveyor. The Examiner asserts that it would have been obvious to provide the apparatus of Vogt with the device of Edie immediately after the skinning step or after the additional fish preparation steps. Applicant traverses this rejection and withdrawal thereof is respectfully requested.

Claim 12 has been amended to incorporate the subject matter of claim 13 and define the upper part of the conveyor belt as comprising drop-shape aluminum beam 18 and 19, generating a smooth upper surface. There is no disclosure or suggestion in either Edie or Vogt of the feature of generating a smooth upper surface on the upper part of the conveyor belt with drop-shape aluminum beams 18 and 19. As such, the instant invention is not obvious over Edie alone or combined with Vogt and withdrawal of the rejection is respectfully requested.

### **CONCLUSION**


In view of the above Amendment, Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact MaryAnne Armstrong, Reg. No. 40,069, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By   
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